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**WINDING UP OF A COMPANY AS A MODE OF LIQUIDATION: A COMPARATIVE ANALYSIS
WITH UK PERSPECTIVES**

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Abstract

In present, the world has been globalized. Therefore, each and every person have been interconnected. Hence, people have started to think in a modernized approached. Consequently new companies enter into the business industry. According to the Sri Lankan Law, companies are governed under the Companies Act, No 07 of 2007. Each and every company which have been and which are going to establish should be registered under the Registrar of Company. In Sri Lanka, there are different types of companies incorporated as limited company, unlimited company, company limited by guarantee. A company is a collaboration of directors, shareholder and employees. Therefore, within the company, when a financial crises occur, when a company is unable to pay its debts, when the company has no directors the company ends with winding up. According to the Companies Act there are three modes of winding up. The winding up of a company may be either by the court, voluntary or subject to the supervision of the court. A liquidator is appointed to conduct this process. Liquidator plays a major role throughout the liquidation process. The objective of this research is as follows: the difficulties of liquidation method as mode of winding up a company. Further to ascertain the loopholes of the legal system related to liquidation. Therefore a comparative analysis will be taken place with the UK companies Act 2006. This research is conducted by a qualitative method: primary sources- relevant Acts and Ordinances, secondary sources-relevant articles, websites, law journals, text book. The research paper concludes with recommendations for a liquidation process during particular time frame.

Keywords: Companies Act of Sri Lanka, Companies Act of UK, winding up, Liquidation

Introduction

In the modern world business industries have been developed. Therefore, different types of companies have been adopted in the modern world. Consequently, the Company Act No 7 of 2007 provides the opportunity to structure the business activities within the corporate. There are main three types of companies. Article 3(a) of the Act states about the first type of company. That is “Limited Company” it is elaborate as where the shareholders have a liability to contribute to the assets of the company. Thereafter the Act also provide Articles for “Unlimited Companies” where the shareholders have an unlimited liability to contribute to the assets of the company under Article 3(1)(b). the last type is known as “Companies Limited by Guarantee” Article 3(1)(c) states companies limited by guarantee do not issue shares, but require the members to undertake to contribute to the assets of the company in an amount specified in this Articles in the event of it being put into liquidation.

01.Limited Company

This type is considered as a common business vehicle under the corporate sector. the shareholders cannot be compelled to take further shares without shareholders consent. In the case of *Rayner (Mincing Lane) Ltd v Department of Trade and Industry* held that the shareholders have no further liability for the debts of the company once the share is fully paid. According to Article 89, once shareholder have paid for their shares, the company cannot

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increase their liability to the company or compel them to take further shares in the company without their consent.

02. Unlimited Companies

In such types of companies shareholders have unlimited liability to contribute to the assets of the company. And no great demand for this type but there are instances where persons willing to stand behind business but to use corporate form to protect identity and facilitate flexibility in transfers of ownership. In the legal background at some point it prescribes the requirement of a professional firm that are permitted to incorporate.

03. Companies Limited by Guarantee

In such category, as mention before shares are not issued but requires the members to undertake to contribute to the assets of the company in an amount specified in the Article in the event of it being transfer to liquidation. This does not suite for commercial undertakings. Where, it requires equity from public, but its use for establishing the charitable or non profitable organizations that are funded by grants. At certain point the law prescribes that certain entities: chamber of commerce can only be formed as limited by guarantee.

Winding up

The companies are legal personalities; their winding up is regulated by law. In present, winding up of Sri Lankan companies are governed under the Companies Act No.07 of 2007 and the Winding up Rules of 1939. In case where the winding up of a company commenced prior to the introduction of the new Companies Act and the completion of which is still pending, the applicable laws are the Companies Act No.17 of 1982 and the Winding up Rules of 1939 is applicable.

“ Although a company theoretically has a perpetual existence, there are situations when it could be required to cease its affairs. Since several stakeholder interests could be affected during this process, he law provides a detail procedure for the cessation of operations, disposal of assets, settling of debt and distribution of surplus, if any, between the shareholders. This procedure is referred to as winding up or liquidation.”(Wikramanayake.A.R,2007,P238)

Winding up is the process of selling all the assets of a business, paying off creditors, distributing any remaining assets to the principle of the parent company and then dissolving the company. Article 267 of the Companies Act has been elaborate on types of winding up. Therefore winding up procedures can be categorized into main three types. Such as: winding up by court, voluntary winding up and winding up subject to the supervision of court.

Winding up by court

According to Article 270 of the companies Act stated the circumstance in which a company may be wound up by the court. If:

- (a) It resolves to do so by special resolution
- (b) It does not commence business within a year of incorporation
- (c) It suspends its business for a year
- (d) Its members falls below the minimum number specified in section 4 (2)
- (e) It has no directors
- (f) It is unable to pay its debts
- (g) Where court determines that it is just and equitable to wind it up

Therefore, when a company making losses over and over and the company is unable to pay its debts to the creditors, therefore the company could come up with a Special Resolution for winding up in compliance with Article 219 and make an application to court to wind up the company under Article 270 of the Act. After an inquiry is conducted, if the court is satisfied with the application and is of the

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opinion that it is just and equitable that the company should be wound up, the court will make the Winding up Order and appoint a Liquidator or Liquidators.

Liquidator

Once the winding up order is made the provisional liquidator must summon separate meetings of the creditors and contributories of the company to determine whether an application should be made to court to appoint a liquidator in place of official receiver.

Article 288 and Article 289 states the procedure of resignation. When a court appointed a liquidator may resign or be removed by the court for cause. The vacancy should be filled by the court.

A liquidator is not in the position of a trustee for the individual creditors or contributories. In the case of *Latiff v Fernando* he cannot be held personally responsible for the obligations of the company and is not treated as an employer for the Industrial Disputes Act.

A liquidator must take all property and things in action to which the company is or appear to be entitled, into his custody or control. In the case of *Russian & English Bank v Baring Bros & Co* held that the liquidator may also apply to court to vest the property belonging to the company or held on its behalf in trust, in the liquidator by his official name. After giving indemnities that the court may require, bring or defend in his official name, any actions or legal proceeding relating to such property, or which may be necessary to effectually wind up the company and to recover the company's property according to Article 291 of the Act.

The liquidator should act on his power honestly and with due care with a degree of diligence and promptitude that will ensure that the winding up will be completed within a reasonable time. The concept of reasonableness depends on the circumstance. It is mentioned in the case of *Re House Property & Investments Co*.

A comparative analysis will be taken place with the UK companies Act 2006

The new Companies Act 2006 is more significant of UK company law undertaken. Now that implementation of the new Act is well under way insolvency. Many elements of British company law are deeply embedded in nineteenth-century assumptions. Change has come very slowly when efforts have been made to modernize company law in the United Kingdom. The passage of the Companies Act 2006 was a significant advance after a lengthy period of debate and consultation, but the outcome is far from perfection. This legislation has, however, introduced some important new concepts into this body of British law. The Act sought to simplify company law and to start with a small firm focus as these comprise the vast majority of companies. For the first time, the Act also codified the duties of directors and introduced the concept of 'enlightened shareholder value', to give greater attention to stakeholders other than shareholders and to encourage companies to adopt more long-term perspectives. It is however, still relatively too early to provide a definitive review of recent UK company law reforms, although UK corporate governance practices are deserving of more attention as they have been in place for some time, despite the introduction of new reforms such as the recent Stewardship Code.

Conclusion

In this research paper, an overview of some of the important provisions which relates to liquidation and winding up concepts were discussed under the new Companies Act No.07 of 2007. Therefore the provisions deal with the winding up of insolvent companies by court, were perused. By perusing this relevant documents related to liquidation I could identify some loopholes in the legal system in Sri Lanka. The main point is the Companies Act doesn't provide any provision in relation to the liquidation time period. Therefore it takes a long process. And the other point that I could figure out is the liquidator can resign from his appointment. Therefore the responsibility is passed to another person.



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There for by covering up such issues will the winding up procedure would be more effective towards the business industry.

Recommendation

The Sri Lankan company Act Does not specifies states a particular time period to conclude the liquidation procedure. Therefore this procedure take long time to the concluded the liquidation process. Therefore I will recommend, to introduce a particle time period to concluded the liquidation

References

Latiff v Fernando (SC Application 911/74)

Rayner (Mincing Lane) Ltd v Department of Trade and Industry (1989) ch 72

Re House Property & Investments Co (1954)Ch 567

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